

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT

IN RE:
JENNIFER LOUISE LEMAIRE

CASE NO: 19-52510
CHAPTER: 13
JUDGE: RANDON

Debtor(s) /

**DEBTOR'S MOTION TO COMPEL CREDITOR MICHIGAN DEPARTMENT OF
TREASURY TO RETURN 2020 STATE OF MICHIGAN TAX REFUND TO DEBTOR
FOR VIOLATION OF THE AUTOMATIC STAY**

NOW COMES Debtor, by and through her attorneys, B.O.C. Law Group, P.C., and in support of this motion states the following:

1. Debtor filed for relief under Chapter 13 of the Bankruptcy Code on August 30, 2019.
2. At the time of the filing of the Petition, Debtor was indebted to creditor Michigan Department of Treasury-State Agency Collections for \$4,291.33.
3. On September 12, 2019, Debtor filed a Schedule F in this case listing debts to Michigan Department of Treasury totaling \$6,446.33.
4. On or about February 26, 2021, State of Michigan Department of Treasury filed a Proof of Claim in the amount of \$4,291.33 as an unsecured claim (Claim 12).
5. On or about April 22, 2022, Debtor received a Notice of Hold on Income Tax Refund or Credit from the Michigan Department of Treasury and that the 2020 refund was being applied to the balance owed that was listed on Schedule F as unsecured and dischargeable (Please see attached).
6. On or about July 25, 2022, Debtor's Counsel contacted the State of Michigan Attorney General's office and was informed that the collection system will always put a hold on the refunds until administratively the Collection Department releases the funds. However, this has gone on consistently the last three years. On August 8, 2022, undersigned counsel for the Debtor contact the State Of Michigan Department of Treasury one last time, prior to filing this motion, to have the state refunds returned, with no result. As such, Debtor files this motion.
7. That under 11 U.S.C. §362(a)(6), this action by the State of Michigan Department of Treasury represents an act to "collect, assess or recover a claim against the debtor that arose before the commencement of the case" and that the State of Michigan Department of Treasury is therefore in violation of the automatic stay.

8. That pursuant to LBR 9014-1, the Debtor sought concurrence in this motion and was denied such concurrence.
9. Debtor therefore requests the following:
 - a. That the State of Michigan Department of Treasury, by or through its agents, shall immediately issue the 2020 State of Michigan Income Tax refund due to the Debtor in the amount of \$1,526.00.
10. Attached is a proposed Order.

WHEREFORE Debtor, through the reasons stated above, prays this Honorable Court grant her motion and the relief requested herein, as well as any further relief deemed equitable and just.

Respectfully submitted,

/s/ C. Jason Cardasis
C. Jason Cardasis (P54930)
Attorneys for Debtor
24100 Woodward Ave.
Pleasant Ridge, MI 48069
248-584-2100
jasoncardasis@boclaw.com

Dated: August 8, 2022

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT

IN RE:
JENNIFER LOUISE LEMAIRE

CASE NO: 19-52510
CHAPTER: 13
JUDGE: RANDON

Debtor(s) /

**ORDER GRANTING MOTION TO COMPEL CREDITOR MICHIGAN DEPARTMENT
OF TREASURY TO RETURN 2020 STATE OF MICHIGAN TAX REFUND TO
DEBTOR**

THIS MATTER having come before the Court upon Debtor's Motion to Compel Creditor Michigan Department of Treasury to Return 2020 State of Michigan Tax Refund to Debtor, the Court having read the motion, and the respondent having failed to file a response to the motion or take any other relief as required; a hearing being held in open court, and for the reasons so stated on the record;

NOW WHEREFORE:

IT IS HEREBY ORDERED That the State of Michigan Department of Treasury, by or through its agents, shall immediately issue the 2021 State of Michigan Income Tax refund due to the Debtor in the amount of \$1,526.00.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT

IN RE:

JENNIFER LOUISE LEMAIRE

CASE NO: 19-52510
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JUDGE: RANDON

Debtor(s) /

Address: 20455 Negaunee, Redford, MI 48240

Last four digits of Social Security or
Employer's Tax Identification (EIN) No(s).(if any): xxx-xx-0664

**NOTICE OF DEBTOR'S MOTION TO COMPEL CREDITOR MICHIGAN DEPARTMENT OF
TREASURY TO RETURN 2020 STATE OF MICHIGAN TAX REFUND TO DEBTOR**

William R. Orlow has filed papers with the court for the Debtor's Motion to Compel Creditor DTE Energy Company to Activate Debtor's Gas and Electrical Service.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in a motion or objection], or if you want the court to consider your views on the motion, within **14** days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:¹

United States Bankruptcy Court
211 W. Fort Street, Suite 2100
Detroit, Michigan 48226

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

B.O.C. Law Group, P.C.
Attorney for Debtors
24100 Woodward Avenue, Suite B
Pleasant Ridge, Michigan 48069

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

¹ Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e)

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Respectfully submitted,

/s/ C. Jason Cardasis
C. Jason Cardasis (P54930)
Attorneys for Debtor
24100 Woodward Ave.
Pleasant Ridge, MI 48069
248-584-2100
bocecf@boclaw.com

Dated: August 8, 2022

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT

IN RE:

JENNIFER LOUISE LEMAIRE

CASE NO: 19-52510

CHAPTER: 13

JUDGE: RANDON

Debtor(s) /

BRIEF IN SUPPORT OF DEBTOR'S MOTION TO COMPEL CREDITOR MICHIGAN
DEPARTMENT OF TREASURY TO RETURN 2020 STATE OF MICHIGAN TAX
REFUND TO DEBTOR

NOW COMES Debtor, by and through her counsel, B.O.C. Law Group, P.C., and for the brief in support of this Motion, states:

Debtors hereby rely on the statements made herein and 11 U.S.C. §§ 105 and 362 in support of this Motion.

Respectfully submitted,

/s/ C. Jason Cardasis
C. Jason Cardasis (P54930)
Attorneys for Debtor
24100 Woodward Ave.
Pleasant Ridge, MI 48069
248-584-2100
bocecf@boclaw.com

Dated: August 8, 2022

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT

IN RE:
JENNIFER LOUISE LEMAIRE

CASE NO: 19-52510
CHAPTER: 13
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Debtor(s) /

CERTIFICATE OF SERVICE

C. JASON CARDASIS on August 8, 2022 did serve the following documents via the Court's ECF System: Debtor's Motion to Compel the State of Michigan to Return Tax Refunds in Violation of the Automatic Stay, Proposed Order, Notice and Opportunity to Respond, Brief in Support, Certificate of Service and Exhibits; upon:

Krispen S. Carroll
Chapter 13 Standing Trustee
719 Griswold, Suite 1100
Detroit, MI 48226

Michigan Department of Treasury
Bankruptcy Unit
P.O. Box 30168
Lansing, MI 48909

Michigan Department of Treasury
c/o Michigan Attorney General
P.O. Box 30456
Lansing, MI 48909

Respectfully submitted,

/s/ C. Jason Cardasis
C. Jason Cardasis (P54930)
Attorneys for Debtor
24100 Woodward Ave.
Pleasant Ridge, MI 48069
248-584-2100
bocecf@boclaw.com

Dated: August 8, 2022

Michigan Department of Treasury
3310 (Rev. 09-10)
TC06246Z03MAN

Notice of Hold on Income Tax Refund or Credit

04/22/2022

TOMASZEWSKI DAVID J & JENNIFER
20472 POINCIANA
REDFORD MI 48240

XXX-XX-0954
XXX-XX-0664

Refund Amount: \$1,526.00
Return Year : 2021

The Michigan Department of Treasury is holding your income tax refund or credit for the tax year listed above based on the outstanding debt(s) below. A refund from a joint return may be allocated between spouses when only one spouse owes the debt.

If your spouse does not want his or her share of the refund used as payment for your debt, complete the enclosed personalized Form 743, *Income Allocation for Non-Obligated Spouse*. This form is used to divide the refund amount between each spouse and designate how much of the joint refund can be applied to the debt. Instructions for completing this form and a worksheet (for your records) are also enclosed. The enclosed personalized form has information from your return and is the only form we will accept. **If both spouses agree to apply the entire refund to the debt(s) do not complete the form. Check the box provided above the signature area on page 2 of the form, each spouse must sign and date.**

For more information, you may submit a request through our customer self-service Web site at www.michigan.gov/iit or by calling (517) 636-4486. If we do not receive your form within 30 days of the date on this letter we will apply the entire refund to the debt(s).

| <u>Account Number</u> | <u>Type of Debt</u> | <u>Balance Due</u> |
|-----------------------|--------------------------|--------------------|
| SXXX-XX-0664S | State Agency Collections | 4,291.33 |

Fill in this information to identify the case:

| | |
|--|-------------------------|
| Debtor 1 | JENNIFER LOUISE LEMAIRE |
| Debtor 2 | Spouse, if filing |
| United States Bankruptcy Court for the: EASTERN DISTRICT OF MICHIGAN | |
| Case number 19-52510 MAR | |

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Fillers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claims as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

| | | | |
|--|--|---|--|
| 1. Who is the current creditor? | Michigan Department of Treasury Name of the current creditor (the person or entity to be paid for this claim) | | |
| | Other names the creditor used with the debtor _____ | | |
| 2. Has this claim been acquired from someone else? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____ | | |
| 3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) | Where should notices to the creditor be sent? Michigan Department of Treasury Name Bankruptcy Unit, P.O. Box 30168 Number Street Lansing MI 48909 City State ZIP Code Contact phone (517) 241-5002 Contact email N/A | Where should payments to the creditor be sent? (if different) Michigan Department of Treasury/Revenue/AG Name P.O. Box 30456 Number Street Lansing MI 48909-7955 City State ZIP Code Contact phone (517) 241-5002 Contact email N/A | |
| Uniform claim identifier for electronic payments in chapter 13 (if you use one): ----- | | | |
| 4. Does this claim amend one already filed? | <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) 12-1 Filed on 1/3/2020 MM / DD / YYYY | | |
| 5. Do you know if anyone else has filed a proof of claim for this claim? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____ | | |

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 0664

7. How much is the claim? \$ 4,291.33. Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(e)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.
State Agency Debt

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) 6.39 %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. **Amount necessary to cure any default as of the date of the petition:** \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

The Michigan Department of Treasury has not identified a right of setoff or counterclaim. However, all rights of setoff are preserved and will be asserted to the extent lawful.

| | | |
|---|--|--|
| 12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? | <input checked="" type="checkbox"/> No | Amount entitled to priority |
| | <input type="checkbox"/> Yes. Check one: | |
| A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority. | | <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____ |
| | | <input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____ |
| | | <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____ |
| | | <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____ |
| | | <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____ |
| | | <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a) ___ that applies. \$ _____ |

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it.
FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$600,000, imprisoned for up to 5 years, or both.
18 U.S.C. §§ 152, 167, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/26/2021
MM / DD / YYYY

/s/ Kavita Kale

Signature

Print the name of the person who is completing and signing this claim:

| | | | |
|---|---------------------------------|-------------|-----------|
| Name | KAVITA KALE | | |
| | First name | Middle name | Last name |
| Title | | | |
| Company | Michigan Department of Treasury | | |
| Identify the corporate servicer as the company if the authorized agent is a servicer. | | | |
| Address | P.O. Box 30168 | | |
| | Number | Street | |
| | Lansing | | MI 48909 |
| Contact phone | City | State | ZIP Code |
| | (517) 241-5002 | | N/A |
| | | Email | |

| Michigan Department of Treasury 4265 (11-04) Sworn Summary Issued under federal code, Title XI Type of Claim: Unsecured Amended 1 | | | | 61745389 | Case Number: 19-52510 MAR | Page 1 of 1 21551218 | | |
|---|-----------|-----------------|------------|--|---|--------------------------------|------------|----------|
| | | | | | Taxpayer Identification: 0664 | Attorney General: | | |
| JENNIFER LOUISE LEMAIRE 20455 NEGAUNEE REDFORD, MI. 48240 | | | | Other Identification: S0664S | | | | |
| Assessment Number | Debt Code | Assessment Date | Account ID | Tax Period | *If Est | Tax Deficiency | Penalty | Interest |
| VA7BG4K | CTM | 12/09/20 | S0664S | SUPERVISION FEE | | \$4,291.33 | \$0.00 | \$0.00 |
| | | | | | | \$4,291.33 | \$0.00 | \$0.00 |
| | | | | | | TOTAL CLAIM | \$4,291.33 | |
| <p>* An asterisk in this column indicates that tax liability is estimated based on the best information available since actual returns have not been filed. This claim will be adjusted when actual returns are filed.</p> <p>KAVITA KALE _____ being duly sworn, deposes and says (s)he is authorized to act for the Department of Treasury and, to the best of her/his knowledge and belief, the defendant is indebted to the State of Michigan in this amount.</p> <p>Signature _____ Date: 02/26/2021</p> <p>19-52510-Case 10652510 Filed 08/20/22 Entered 02/26/22 10:34:44 Page 12 of 12 /s/ Kavita Kale</p> | | | | | | | | |